

Robert Grosseteste, Natural Law and Magna Carta: national and universal law in 1253

Abstract

This paper considers how the English episcopate's complaints (*gravamina*) of 1253 demonstrate one view of how the king's authority could be curbed through Magna Carta and the Charter of the Forest. The *gravamina* were drafted by Robert Grosseteste, bishop of Lincoln 1235-1253, and declare that the king is ignoring universal, natural law, and man-made common law. They reveal Grosseteste's own view of the relationship between justice and natural law and how this should influence written law codes to ensure the salvation of mankind. Grosseteste interpreted the charters of liberties through natural law, as intended to bring common law and natural law into line with each other to make salvation possible through the exercise of justice. Magna Carta was now not an immediate solution to a local problem, but part of a universal, eternal concern. As the document was issued in the names of all the episcopate they also consented to this view.

Key words: Magna Carta; natural law; justice; pastoral care; Robert Grosseteste

In 1253, Robert Grosseteste, bishop of Lincoln 1235-1253, acting on behalf of the entire English episcopate, drew up a set of formal complaints (*gravamina*) concerning the king's interference in the rights, and administration, of the church in England. It ended with a damning indictment of King Henry III. The king, he said, could scarcely keep one of the articles in the charters he had granted for the peace of the kingdom, and solemnly sworn to maintain.¹ Those charters were Magna Carta and its sibling, the Charter of the Forest.² They were already, by the mid-thirteenth century, beginning to be seen as having enduring power to curb royal excess, and were to underpin the development of English ideas of justice and law, becoming iconic symbols of national identity. This article explores how and why Grosseteste, a man who forcefully rejected any idea that Church and State should come under the same form of government, conceived of and engaged with these foundational charters of the English state. It examines the ways in which these charters, although local solutions to local problems, reflect the broader international Christian intellectual culture, as understood and articulated by Robert Grosseteste, and suggests that Grosseteste's *gravamina* of 1253,

¹ *Councils & Synods 2 part 1: 1205-1265*, eds F.M. Powicke and C.R. Cheney (Oxford, 1964), p. 472, article 17.

² Magna Carta was granted initially by a reluctant king John in 1215. It was reissued, with the new forest charter, by the young king, Henry in 1217 (under the influence of his guardians), and then again in 1225 when the young king assumed his personal rule. See James Holt, *Magna Carta* (3rd ed., Cambridge, 2015), 314-34.

composed and issued in the same year that Magna Carta was again reissued, throw light on the intellectual and legal contexts of these charters during an important period of their evolution.³

That the *gravamina* mention these two charters at all could seem to be surprising. Except for clause one of Magna Carta, that talks generally about the liberties of the Church (that is, its freedom from interference from the state), after their 1225 reissue, the charters focussed upon secular matters which had little immediate bearing on the Church's operations. English bishops were, by virtue of their office, also secular barons and members of the king's council, and so were affected by the charters' provisions in that way, but these *gravamina* do not concern the secular concerns of the episcopate. They focus on issues which were peculiar to the Church and, as such, belong in a whole series of similar episcopal complaints to the Crown; there had been episcopal *gravamina* in 1239, with which Grosseteste had also been involved,⁴ and there were to be more in the later-thirteenth and fourteenth centuries. Why, then, did Grosseteste sum up the complaints of the Church in 1253, by making reference to two charters that, taken at face value, offered little detailed support for the bishops' cause?

Grosseteste's cognitive world is the key to understanding this conjunction of ecclesiastical complaints and secular law. In 1253, Grosseteste was not just a respected senior bishop who could be relied upon to represent the discontented spiritual barons, in what was a dispute over taxation and authority, and who could be trusted to draft and present a cogent written document. He was also looked to as a scholar, well-versed in contemporary learning and knowledgeable about international currents of Church reform. To understand the 1253 *gravamina* we need to look beyond problems relating to secular rule in England, the grievances of barons, widows and forest dwellers, and the practical problems of bishops, abbots and clergy, and to step away from the specific concerns of parish, barony and kingdom. For whilst Grosseteste certainly believed that all those with authority and all forms of government must not only uphold the secular, and local, law of the kingdom, he was a man who aligned his thoughts with the far more important laws which applied universally: divine law

³ David Carpenter, 'Magna Carta 1253: the ambitions of the church and the divisions within the realm', *Historical Research* 86 (2013) 179-90 at 186-7; *ibid.*, 'More light on Henry III's Confirmation of Magna Carta in 1253', *Historical Research* 86 (2013), 190-195.

⁴ See *Councils & Synods*, 480; *The Letters of Robert Grosseteste, Bishop of Lincoln*, ed. F. A. C. Mantello and J. Goering (Toronto, 2010), 229.

and natural law. They were the guarantee of justice in all law codes, and treating men and women with justice had a spiritual, as well as a secular, benefit, leading them towards salvation.

The Events of 1253

To understand how the gravamina demonstrate Grosseteste's contextualisation of Magna Carta, it is first necessary to put them in their historical perspective. The events of 1253 began, as quarrels between king and clergy so often did in the thirteenth century, with demands for taxes, which were evidence of the king's unwillingness to recognise the autonomy and liberties of the Church. In the first half of 1253, two major gatherings of great men were held in England. One was a provincial Church Council held at London in the second week of January: a meeting of the senior clergy of the province of Canterbury called by the archbishop.⁵ The second was a parliament, a Great Council of the realm, held at Westminster from the 4 to the 13 May. To this the barons, both secular and ecclesiastical (including the bishops), were summoned.⁶ The business of these meetings was not identical, although it was overlapping, but both assemblies had serious concerns about Henry III's rule.

The ecclesiastical council's first focus had been upon bringing internal peace to the English episcopate, by ending a quarrel between the then archbishop of Canterbury, Boniface of Savoy, and the bishop-elect of Winchester, Aymer de Lusignan, concerning an invasion of the archbishop's manors.⁷ This was quickly settled, and the Council then turned to more intractable matters; how to respond to Henry III's continuing demands for taxation from the Church. Three years earlier, in April 1250, Pope Innocent IV had granted the king a crusading tenth. This tax, according to the pope's later letters, was originally intended to be a tenth of the ecclesiastical revenues of England for two years, and the money raised would support the king's own crusading journey to Jerusalem; his oath to go on crusade had been made the month before. The tax had been approved by the English bishops, but its

⁵ *Councils & Synods*, 467-8; Matthew Paris, *Chronica Majora*, ed. H.R. Luard (7 vols, Rolls Series, 1872-83), v. 359-60; R. Vaughn, 'Excerpts from John of Wallingford's Chronicle', *English Historical Review* 73 (1958), 66-77 at 72.; Burton Annals, in *Annales Monastici*, ed. H.R. Luard (5 vols, Rolls Series, 1864-9), i. 305.

⁶ *Councils & Synods*, 474-7; *Chronica Majora* v. 373-4, 377.

⁷ *Chronica Majora*, v. 348-54; Tewkesbury Annals, *Annales Monastici* i. 151; Winchester Annals, *Annales Monastici* ii. 93; Vaughn, 'Chronicle of John of Wallingford', 71-2; D. Williams, 'Aspects of the Career of Boniface of Savoy, archbishop of Canterbury, 1241-1270', PhD University of Wales, 1970, 367-9.

collection was deferred until the king had set a date to begin his expedition.⁸ By 1251, the situation had changed. Following the death of the powerful Holy Roman Emperor, Frederick II, the pope was looking for a European, royal ally for what was to become known as the Sicilian Business, that is, the papal attempt to topple the rule of the Hohenstaufens and replace them with a ruler amenable to the papacy's views.⁹ Knowing that Henry was amongst those whom he might approach, the Pope was amenable to making changes in the grant of taxation he had offered to the king. He wrote to the English episcopate, declaring that they must agree that the crusading tenth be extended from two to three years and to its immediate collection. These changes were clearly enough to require new formal episcopal acknowledgement. The king broached the matter at Reading in March 1251, at a clerical meeting: but he now found that opposition from the previously amenable clergy was so strong that a decision had to be deferred.¹⁰ Part of the problem was, no doubt, the extension of the tax on a clergy who frequently protested its poverty.¹¹ Most important, however, was the phrasing of the papal letter. The English clergy's right not to be taxed by secular powers, without their voluntary agreement, was an important part of their identity. The pope's letter was an instruction, which gave them no opportunity to withhold their agreement.¹² How much they had ever had the liberty to refuse this crusading tenth is debateable, but the illusion of choice, at least, had been there. In April 1252, separate councils of both the northern and southern provinces refused again to consent to the tax.¹³ In October 1252, the king offered a compromise. He would set aside the papal command, and instead he would request that the Church grant him a voluntary aid of the same amount. The bishops agreed, with the provision that the king did not take this as a precedent. Henry refused to accept this condition, and the bishops – unwilling to reject the offer directly when at least one of their

⁸ *The Valuation of Norwich*, ed. W.E. Lunt (Oxford, 1926), 52-95; W.E. Lunt, *Financial Relations of the Papacy with England to 1307* (Cambridge, Mass., 1939), 255.

⁹ See B. Weiler, 'Henry III and the Sicilian business: a reinterpretation', *Historical Research*, 74 (2001), 127-50; R.F. Treharne, *The Baronial Plan of Reform 1258-63* (Manchester, 1962), 50.

¹⁰ *Councils & Synods*, 448-9; *Chronicle of the Monastery of Abingdon 1218-1304*, ed. T. and J.O. Halliwell (Berkshire Ashmolean Society, 1842, 7; Lunt, *Financial Relations*, 256.

¹¹ These duties included the maintenance of Church property and giving alms to the poor. Burton annals, *Annales Monastici*, i.390-1; *Chronica Majora* v. 580-5; Lunt, *Financial Relations*, 251-2.

¹² Lunt, *Financial Relations*, 256.

¹³ Cheney notes that although the surviving documents relate to a Council of the Northern Province, one of the southern province must certainly have been held at a similar time. *Councils & Synods*, 449-50.

archbishops was absent – postponed their decision.¹⁴ In January 1253, the matter came to the ecclesiastical council. After much debate, the bishops agreed to grant the voluntary aid, but only to do so in return for the king's agreement to end a number of oppressions, which they listed in those episcopal complaints which Robert Grosseteste bore the weight of drafting.¹⁵ At the Great Council of April 1253, the clergy agreed to grant the king the tax, but Henry did not directly address their complaints, although he did reissue Magna Carta, with a solemn excommunication against its infringers, issued by all those bishops present.¹⁶

The Gravamina

So the *gravamina* were ignored in 1253, but they provide important information about the context in which Magna Carta and the Charter of the Forest could be placed by the mid-thirteenth century. In part, the *gravamina* were the product of a particular crisis situation: part of a political negotiation between Church and State where very particular, immediate grievances could be included, such as the financial penalty imposed upon Bishop Grosseteste for the disappearance of a recalcitrant clergyman accused of a secular crime.¹⁷ They were also, however, composed in a context of more general ecclesiastical indignation about royal infringement of their rights, and they form one, small part of a process of almost unceasing ecclesiastical complaint and protest about the infringement of the Church's liberties by the Crown from the thirteenth century onwards.¹⁸ For their framer, Grosseteste, they were both immediate and universal. They demonstrate how he contextualised the process of

¹⁴ *Councils & Synods*, 451; *Chronica Majora* v. 324-8.

¹⁵ The Burton chronicler, who was well informed about the political events of the 1250s, attributes the *gravamina* not to the episcopate in general, nor to the archbishop of Canterbury as leader of the English Church, but to Grosseteste (Burton Annals, *Annales Monastici*, i. 305; *Councils & Synods*, 469).

¹⁶ This excommunication was not worded quite as the bishops hoped: see Carpenter, 'Magna Carta 1253: the ambitions of the church and the divisions within the realm', 182-3; J. W. Gray, 'The Church and Magna Carta in the Century after Runnymede', *Historical Studies* 6 (1965), 23-38 at 27-8.

¹⁷ David Carpenter, 'Magna Carta 1253: the ambitions of the church and the divisions within the realm', 185-7.

¹⁸ Starting in the 1230s, continuing in 1253 and then through the linked documents of 1257, 1258 and 1261, and stretching after that to the *gravamina* of 1267, 1280 and 1285, the clerical petitions of 1294, the statements in the *Articuli Cleri* of 1314 and the clerical complaints of 1328-9 and 1341 *Chronica Majora*, iii, 616; *Councils & Synods*, 279-84, 469; *Chronica Majora*, v. 359; Burton annals, *Annales Monastici*, i. 305, 422; Vaughn, 'Excerpts from John of Wallingford's Chronicle', 70-7; J.W. Gray, 'Bishops, Politics and the Two Laws: the *gravamina* of the English Clergy 1237-1399', *Speculum* 41 (1966), 209-45; J. H. Denton, 'The Making of the 'Articuli Cleri' of 1316', *English Historical Review* 101 (1986), 564-595.

complaint and the particular problems of the moment in an intellectual framework, which he saw as universal.

The *gravamina* were not long, being made up of only seventeen clauses. The document's precision suggests that it is a finished and shaped piece. We cannot dismiss its content, as Cheney does, by saying that Grosseteste had, 'harped on these themes throughout his episcopate'.¹⁹ Nor can we tie its clauses just to specific concerns and events, like the one Carpenter highlights.²⁰ The document's structure and phrasing is careful.²¹ It begins with a general statement of complaint around universal laws. Although, it says, holy scripture and canon law place the priesthood above the kingdom, and sacerdotal and ecclesiastical power above royal power; and although the lesser man should not judge the greater, but vice versa, the lord king has sought to judge, condemn and absolve the clergy under his own law. So he has turned authority head over heels, against divine and natural law.²² It ends with the assertion that the king does not abide by his own national charters, that is Magna Carta and the Charter of the Forest. Between these two statements are a set of more specific complaints. The king forces ecclesiastics to make other clerics answer to secular courts, and he even calls bishops to appear there. He refuses to allow the executors and administrators of episcopal wills to carry out their duties, and in doing so he commits sacrilege. When religious houses and bishoprics are vacant, he takes their goods and impoverishes their tenants. He prevents cases which should be heard in the Church courts from going there. He impedes the work of archdeacons and bishops who are carrying out visitations of their parishes, by not allowing them to take evidence on oath from parishioners, to ensure that they tell the truth about their own sins and those of others. In this way he damns the souls of these individuals.²³ Against scripture and canon law, he puts pressure on those appointing clergy to select Henry's chosen men, rather than thinking about the pastoral needs of the

¹⁹ *Councils & Synods*, 467.

²⁰ David Carpenter, 'Magna Carta 1253: the ambitions of the church and the divisions within the realm', 185-7.

²¹ The whole of the document discussed in this section is found at *Councils & Synods*, 469-472; Burton annals, *Annales Monastici* i. 422-5.

²² This was an image he had first used in his draft for the *gravamina* of 1239, but had not included in the final draft, *Letters of Robert Grosseteste*, 241.

²³ Grosseteste's study of the Ten Commandments, *De Decem Mandatis*, describes such lies as a mortal sin, in a discussion of the eighth commandment which is unusual amongst its thirteenth-century analyses. See Lesley Smith, 'The De Decem Mandatis of Robert Grosseteste', in *Robert Grosseteste and the Beginnings of a British Theological Tradition*, ed. Maura O'Carroll (Rome, 2003), 280-2; *Robert Grosseteste, De Decem Mandatis*, ed. R.C. Dales and E.B. King (Oxford, 1987), 80-2.

people. In this the king is a spiritual murderer. He undertakes to appoint and remove clergy himself, when this should only be done by the bishops: so he imitates King Uzziah of Judah.²⁴ Ignoring the fact that the good king should work not for his own good but for the good of others,²⁵ he greatly harms the religious houses where he takes lodging, through his consumption of their goods. He is not content with the usual royal authority in law, but extends his rights, limits ecclesiastical liberties and takes Church property, against canon law. When clergy are accused of secular crimes, he will not have them immediately turned over to the Church, but keeps them for secular trial first. Because itinerant justices appear in the localities so rarely, the cleric must then languish in gaol, or, the bishop must risk losing a bond of £100 for the man if he absconds. When the bishop requests the king to have an obdurate excommunicate arrested, the sheriffs, who receive the royal command to do so, often ignore the issue, to the great damage of ecclesiastical law. Lay bailiffs are allowed to force clerics into secular courts to answer accusations of fornication, adultery or other personal actions.

These complaints were largely prompted by specific, local issues, although the underlying conflict between the jurisdictions of Church and state was not a local, English problem. There was international ecclesiastical concern about secular authorities interfering in the business of, and seizing the income of, ecclesiastical individuals and institutions and making the clergy subject to local, secular law. The independence of the Church was also a central tenet of the great ecclesiastical reform movement of the Western Church, which had begun by the eleventh century and was exemplified in the thirteenth century by the canons of the papal Fourth Lateran Council, held in 1215.²⁶ This hugely influential occasion was in many ways a restatement of the Church's established reform aims and practice. It was also, however, a statement of Pope Innocent III's own agenda and this – as

²⁴ Uzziah was struck with leprosy for intervening in the service of the Temple (2 Chronicles 26: 18-21). Again this is an image included in the draft document of 1239 but not in the final version: in the draft it applies to the separation of the laws of Church and State, *Letters of Robert Grosseteste*, 243.

²⁵ This was an idea which had a long history but Grosseteste's quotation comes from his own translation of Aristotle's *Nicomachean Ethics*, whose principles he also discussed, with the importance of natural law for good rule, before the pope in 1250 ('Rex si quidem bonus est non intendit sibi ipsi set subditis utilia, et eos affectu paterno complectitur et benefacit, et curam eorum agit ut pater filiorum' *Councils & Synods*, 471; *Aristoteles Over de Vriendchap: Boeken VIII en IX van de Nicomachische Ethiek met de commentaren van Apasius en Michael in de Latijnse vertaling van Grosseteste*, ed. W. Stinissen (Brussels, 1963), Book VIII, p. 12).

²⁶ There is an extensive literature on this period of reform, for a general survey see C. Morris, *Papal Monarchy, the Western Church from 1050-1200* (Oxford, 1989), pp. 28-34; Sarah Hamilton, *Church and People in the Medieval West* (London, 2013); Norman Tanner, 'The Fourth Lateran Council of 1215' in *A History of Pastoral Care*, ed. G.R. Evans (London, 2000), 112-25.

Pennington has recently pointed out – included not just a call to crusade, and to the stamping out of heresy, but a call for liberty: that is, the liberty of the Church.²⁷ But when we examine the structure of the *gravamina* we can see that Grosseteste does not contextualise the problems of his local church in the claims of the international church, nor seek to emphasise the claims of the international church in local jurisdiction. Instead he places local rule and administration, both secular and ecclesiastical, in the context of those universal principles which are termed natural law.²⁸

Grosseteste and Natural Law

The right exercise of law, particularly natural law, played an important part in Grosseteste's intellectual world view. There was much debate in the thirteenth-century universities amongst theologians, philosophers and jurists about how and where exactly this law could be recognised and Grosseteste was aware of these disputes and debates. Although he never attempted a clear definition of natural law in any of his work, his discussion of law and justice makes it clear that, for him, natural law was identical with divine law and could be discovered through the scriptures. It was God's will in practice. It was also the law of reason (a God-given gift to mankind), which could be summed up, as the twelfth-century jurist Gratian had it, by the biblical precept, 'Do as you would be done by'.²⁹

²⁷ Kenneth Pennington, 'The Fourth Lateran Council, its Legislation and the Development of Legal procedure', 4 [draft at https://www.academia.edu/13796862/The_Fourth_Lateran_Council_its_Legislation_and_the_Development_of_Legal_Procedure], accessed 9 July 2015].

²⁸ Divine law, also mentioned by Grosseteste at the start of the *gravamina*, was not the same as the Church's canon law (to which the *gravamina* also refer); rather it was the expression of God's will. Natural law was also an expression of the will of God. In the thirteenth-century it was seen as at least overlapping with divine law, and for some scholars, like Grosseteste, seems to have been all but synonymous with it. In 1253 he lists the two laws separately, but in 1250 he is clear that both concern God's will, and that natural law is the 'law of the Gospels'. (*Councils & Synods*, 469; Gieben, 'Robert Grosseteste at the papal curia', 378; Pantin, 'Grosseteste's relations with the Papacy and the Crown', 213).

²⁹ This is the idea behind Grosseteste's discussion of reason and free will in *De libero arbitrio*: here Grosseteste proposes that whilst man can choose to ignore it, his reason will provide him with the right action which will be in line with God's will ('De libero arbitrio', in *Die Philosophischen Werke des Robert Grosseteste, Bischofs von Lincoln*, ed. Ludwig Baur (Münster, 1912), 224. For a discussion which considers reason and God's will but stops short of connecting this to Grosseteste's view of natural law, see Neil Lewis, 'Libertas Arbitrii in Robert Grosseteste's *De libero arbitrio*', in *Robert Grosseteste and his Intellectual Milieu*, ed. J. Flood, James R. Ginther, Joseph W. Goering (Toronto, 2013), 11-33, particularly 25-6. For natural law in general see Michael Crowe, *The Changing Profile of the Natural Law* (Nijoff, 1977), 72-77. Brian Tierney, 'Natura Id Est Deus: a Case of Juristic Pantheism?', *Journal of the History of Ideas*, 24 (1963), 307-22 at 309-13; Anthony Black, *Political Thought in Europe 1250-1450* (Cambridge, 1992), 34-41; Janet Coleman, *The Individual in Political Theory and Practice* (Oxford, 1996), 15-16.

It was clear to Grosseteste that a world operating according to natural law would ensure the liberties of the Church; this was vital, in order to further that institution's central pastoral work of saving souls. Upholding natural law necessitated the exercising of good governance, ruling for others not for oneself. This applied to the Church: Grosseteste conceived of the hierarchy of clergy and laity and the right working of authority in the context of natural law, as he described to the pope in 1250, and earlier, to other clerics, in his letters.³⁰ Natural law established the order of authority: from God, to the Church to the laity. The obligation of all those in this hierarchy was to guide those under them to salvation, by teaching them the scriptures, through personal example of a good life, and by not impeding their spiritual progress by treating them with injustice. To fail in this duty was a serious matter. Grosseteste himself was convinced that if he allowed one soul to be lost, he would find himself with the murderers at the Last Judgement.³¹ But although the layman (including the king) found himself at the bottom of this pyramid, he nevertheless had the same obligations. Kings' adherence to the principles of natural law would mean that the Church would not suffer from secular interference in its use of its secular income, or its appointment of clerics, freeing it to provide good-quality, educated clergy and to preach and teach, so leading men and women to salvation. In these important areas the king owed obedience to the Church, and should not interfere with its authority.

Natural law was a difficult proposition, however. It was not easy, even for those who had studied law and theology for many years, to decide what it was. How was adherence to natural law to be recognised? Grosseteste was clear that natural law could be known because it led to justice. Justice was centrally important to Grosseteste because the careful and just correction – secular and ecclesiastical – of men and women was what led them to repent of and confess their wrong-doing, and

³⁰ James McEvoy, *The Philosophy of Robert Grosseteste* (Oxford, 1982), 419; Servus Gieben, 'Robert Grosseteste at the papal curia, Lyons, 1250: edition of the documents', *Collectanea Franciscana* 41 (1971), 340-93, at 378; *Letters of Robert Grosseteste*, 109-11, 118-19.

³¹ *Letters of Robert Grosseteste*, 293-4. For Grosseteste's hierarchical views and pastoral care, see C. Taylor-Hogan, 'Pseudo-Dionysius and the Ecclesiology of Robert Grosseteste: a Fruitful Symbiosis', in *Robert Grosseteste: New Perspectives on His Thought and Scholarship*, ed. J. McEvoy (Turnhout, 1995), 189-212, particularly 190-8; Candice Taylor Quinn, 'Robert Grosseteste and the Corpus Dionysiacum: Accessing Spiritual Realities Through the Word', in *Editing Robert Grosseteste*, eds. E.A. Mackie and J. Goering (Toronto, 2003), 79-95 and James R. Ginther, 'Robert Grosseteste's Theology of Pastoral Care', in *A Companion to Pastoral Care in the Late Middle Ages (1200-1500)*, eds. J. Caskey, A.S. Cohen and L. Safran (Leiden, 2010), 107-8.

to focus upon doing right, so leading them to salvation.³² Ideally following a written law code should lead people to act justly, because that code should align with natural law. This did not always happen though: perhaps there was a gap in written law, or just as often the law did not allow for every circumstance or was being stretched, so that keeping it was more unjust than not. Where it was difficult to be certain about what was just, and in a fallen world that was bound to occur, people must turn to the scriptures where God had left instructions, although the Church's help in interpreting them might be needed.³³

This applied to ecclesiastical written law – canon law – but it also applied to secular law and to the exercise of secular authority. By 1253, Grosseteste had already attempted to guide the king in the right use of his power. He wrote to Henry III about seven years earlier, explaining to him his duty. In essence, this was to keep his coronation oath: to support the Church and allow no secular interference in its work; to ensure the keeping of secular peace, so the Church could fulfil its duties; and to rule by just laws.³⁴ His anointing at his coronation, said the bishop, gave Henry no privileges, but it would help him to fulfil these obligations. The Holy Spirit would give him the ability to defend the kingdom physically, but more than that, it would allow him to rule with justice, making good laws which showed an understanding of God's will and the natural order of the world.³⁵ In other words, Henry would be helped to understand the universal laws of God and nature, and so the positive law he made, and the way he administered the common law of England, would be just. A king's good rule would keep the nation in a state of peace and stability through the exercise of justice, and his understanding of universal law would lead him to do his duty towards the Church. In these conditions, the Church could do its job of saving souls.³⁶

³² Dictum 28, ms Bodley 798, fo. 23v). Also Dictum 130, ms Bodley 798, fos 106v-107r. To do God's will, to follow reason, was for Grosseteste to do what was just: see his 'De libero arbitrio', ed. Baur, 224.

³³ Grosseteste discusses this in his description of the role of the good ecclesiastical leader in 1250 at the papal curia, and in his theological work, *De Cessatione Legalium*, McEvoy, *The Philosophy of Robert Grosseteste*, 419; Gieben, 'Robert Grosseteste at the papal curia', 378; *De Cessatione Legalium*, Particula Prima, V. 1-6 (*Robert Grosseteste, De Cessatione Legalium*, ed. Richard C. Dales and Edward B. King (London, 1986), 21-24).

³⁴ *Letters of Robert Grosseteste*, 367.

³⁵ *Letters of Robert Grosseteste*, 368-9.

³⁶ Grosseteste was very aware of the dangers of material want and fear distracting people from the state of their souls (Dictum 90, Bodleian Library, ms Bodley 798, fos 66v-67r).

In 1239, Grosseteste had expressed some of his ideas about natural law in what was a draft of his earlier *gravamina*. The final version of that document lacked any of this broader legal and theological context, and the theological discussion in the draft is focussed very much on the legal separation of Church and State, but it does record the importance of a king obeying natural and divine law, and it considers the value of good kingship. A king who encourages others to sin, it says, sins himself. But these statements are only found in the context of the courts: a bad king lures an ecclesiastic to act as judge in the secular courts against divine law. The hierarchy of types of law and of the authority of Church and State is used only to explain why a cleric should not have to answer to a lay authority.³⁷ The early *gravamina* also invoke Magna Carta, as does their draft, but only through its first clause, which specifically guarantees Church liberties. In 1253, Grosseteste's document conceives of law in general, and of Magna Carta, in this new context, in a different way. He returns to his draft of 1239 to mine it for theological examples, but he puts the king's actions in the broader context of the salvation of the nation, and he places Magna Carta and the Charter of the Forests in the context of the keeping of natural law.

Natural Law and Magna Carta

Divine, natural law was, then, the standard against which all the king's actions should be measured: it was the standard of scripture and of reason. Their maintenance was vital to the balance and peace of the kingdom and therefore to the salvation of souls. The application of divine and natural law was, for Grosseteste, the only context for any attempt to correct the king's excesses, and it had a conceptual power beyond that of man-made law. Ideal written law should, however, also be an articulation of those universal principles. So Magna Carta and the Charter of the Forest were themselves, for Grosseteste, an expression of natural law. In 1253, Grosseteste saw the importance of Magna Carta for the Church as not limited to its first clause, which addressed general ecclesiastical liberties,³⁸ and the Forest Charter's significance was more than its curbing and organising of what was the king's personal law in his own private, royal forests. Rather, the charters were more generally

³⁷ *Letters of Robert Grosseteste*, 230-5.

³⁸ Holt, *Magna Carta*, 429-33.

articulations of principles of justice. The *gravamina* were not unique in measuring the exercise of kingship against the dictates of natural law, but they demonstrate that Magna Carta could be used as part of that measurement. It could be interpreted as itself containing natural law. The king's actions, around 1215 and 1253, may have been within the letter of the common law, which was being stretched rather than broken, but they were not just and therefore did not uphold natural law. The charter of liberties limited the ways in which the king could exact money and property from his subjects. He could not take taxes and fines at a level that he chose.³⁹ He could not allow those with guardianship of land to use their right to manage the land to exploit it.⁴⁰ He could not exploit, or allow the exploitation of, those goods which were marriageable women; or at least he could only do so to a lesser degree.⁴¹ He could not seize a man's land as he chose, nor exploit knight's service for his own gain, or to pursue an unjust war.⁴² Justice must not be sold, denied or delayed.⁴³ The courts must be held in a set place, so they could be found; they must continue to sit for as long as was necessary to hear cases brought to them; and people must be called to them in a regular and understood manner.⁴⁴ The word of officials was not enough to convict someone in the courts, witnesses were required.⁴⁵ The king could not take men's goods without payment or permission.⁴⁶ When the king ignored Magna Carta or the Charter of the Forest he was, as Maddicot has pointed out, making a statement about royal authority and about the royal relationship to the law, and his contemporaries were aware of this. The *gravamina* suggest that the statement he was making could be seen as about his relationship to all sorts of law, not just the secular law of England.⁴⁷

It was this which had a universal, rather than a local, significance. For Grosseteste, in abandoning justice by breaking the charters, the king was also abandoning natural law and ignoring his obligation to act on behalf of his subjects and this had implications for the nation's, and the

³⁹ Holt, *Magna Carta*, 421, 423 in 1225 reissue clauses 3, 14.

⁴⁰ Holt, *Magna Carta*, 421 1225 in 1225 reissue clauses, 4, 5.

⁴¹ Holt, *Magna Carta*, 421, 1225 in 1225 reissue clause 7.

⁴² Holt, *Magna Carta*, 422, 1225 in 1225 reissue clause 10.

⁴³ Holt, *Magna Carta*, 425 in 1225 reissue clause 29.

⁴⁴ Holt, *Magna Carta*, 423 in 1225 reissue clauses 11, 12.

⁴⁵ Holt, *Magna Carta*, 425 in 1225 reissue clause 28.

⁴⁶ Holt, *Magna Carta*, 424 in 1225 reissue clauses 19-22.

⁴⁷ John Maddicot, 'Magna Carta and the local community', *Past and Present* 102 (1984), 25-65, at 45.

world's, salvation.⁴⁸ When in the *gravamina* he described the king as a murderer for potentially squandering souls,⁴⁹ this was not, for him, hyperbole. To put on one side the Great Charter was to damage the Church just as surely as the infringements of canon law detailed in the *gravamina*. It bypassed justice and risked the damnation of souls. Carpenter is right that if we look at the specifics, the bishops did not get what they wanted in 1253, and they would continue to present the same complaints to the king, again and again, in the following years.⁵⁰ But for Grosseteste, and perhaps for the other bishops who agreed to have the *gravamina* issued in their names, the reissuing of Magna Carta in 1253 may have seemed to be enough, or at least to be a step forward. A king tied to the principles of Magna Carta was a king tied to justice and to God's will and law. He should abide by, and work with, the local law of his people, but he was also tied to a conception of a broader kind of justice which applied to all people and all nations and which Grosseteste believed would ensure universal salvation.

Revisiting legal influences in Magna Carta

The possibility that for some in the thirteenth-century, Magna Carta could have been seen in a natural law context, has not previously attracted much attention from scholars. The traces of legal systems other than English common law have been sought in it, and even where current academic thought rejects the influence of these other law codes, contemporaries may have felt that forms of justice familiar to their own experience could be found in the document. Holt would not concede that canon law or Archbishop Langton had had an over-riding influence upon the charter, but he did note some specific, detailed clauses in the 1215 issue which arose directly from Church law, although these would be largely lost in Henry III's reissues by 1225, and the bishops who witnessed the charter must have been aware of at least some of these.⁵¹ More recently, Helmholz has returned to the issue of ecclesiastical influence. He suggested extensive areas of the charter in which the *ius commune* (that

⁴⁸ On the international context for this, and the importance of natural law in ideas of the end of the world see Philippa Hoskin, 'Natural law, protest and the English Episcopate 1257-1265', *Thirteenth Century England* xv (2015), 83-98.

⁴⁹ *Councils & Synods*, 470-1.

⁵⁰ Carpenter, 'Magna Carta 1253: the ambitions of the church and the divisions within the realm', 188-90.

⁵¹ Holt, *Magna Carta*, 14-15, 242-3.

mixture of canon law and Roman law which was found in the universities and in the Church from the twelfth century) could have influenced the clauses of the charter.⁵² Although his suggestions are supported by Pennington, and by Brundage,⁵³ he too failed to convince Holt, or Hudson that the *ius commune* had anything but a very small influence on the Charter's clauses.⁵⁴ Yet, those ideas which were familiar from the *ius commune* must have gone some way to convincing the educated clerics of 1215, and later, that the Charter was in line with Gods will. Tierney and Pennington come closest to considering that natural law could have been identified as an underlying assumption of both the charters of liberty in the thirteenth-century. Tierney attempts to fit the charter into a developing concept of a congregation of the faithful, which seems to draw more from Augustine's divine city than a physical medieval city, and which is guided by communal and individual rights in line with a divine will.⁵⁵ Before starting his consideration of Magna Carta's legal background, Pennington rejects the description of the *ius commune* as 'learned law', pointing out that it developed in a period when the separating line between law and theology was unclear, and that, 'the 'norms' that formed the basis of medieval jurisprudence are the jurisprudential equivalents to the Christian ethical and moral precepts that medieval theologians and philosophers developed during the Middle Ages'.⁵⁶

For its drafters, Magna Carta was unlikely to have consciously represented an attempt to make the positive, man-made English common law an embodiment of universal, natural law. For both the secular barons and the bishops, in 1215, the Charter of Liberties was intended to solve a particular crisis. Its later reissues were to remind the king of his place under the law of Church and country again in specific, national circumstances, but as Magna Carta became a symbol of more general forms

⁵² R.H. Helmholz, 'Magna Carta and the *ius commune*', *University of Chicago Law Review* 66 (1999), 297-371, particularly 361, 371.

⁵³ Kenneth Pennington, 'The *Ius commune*, Surety and Magna Carta', *Rivista Internazionale di Diritto Comune* 11 (2000), 254-74 particularly at 273-4; James A. Brundage, 'The Managerial Revolution in the English Church' in *Magna Carta and the England of King John*, ed. Janet S. Loengard (Woodbridge, 2010), 81-98 at 95-7.

⁵⁴ Hudson acknowledged that some of the clauses attributed to canon law may have just as easily arisen from familiarity with the *ius commune*, but remained convinced that many of the articles for which Helmholz had made a case, were more likely to have been influenced by early, English common law, see John Hudson, 'Magna Carta, the *ius commune* and English Common Law' in *Magna Carta and the England of King John*, 99-119.

⁵⁵ Brian Tierney, 'Religion and rights: a medieval perspective', *Journal of Law and Religion* 5(1987), 167-75 at 172-175

⁵⁶ Pennington, 'The *Ius Commune*, Surety and Magna Carta', 81; *ibid.*, 'Learned Law, Droit Savant, Gelehrtes Recht: The Tyranny of a Concept', *Rivista Internazionale di Diritto Comune* 5 (1994) 197-209 and *Syracuse Journal of International Law and Commerce* 20 (1994) 205-215.

of justice, it was possible to think that one recognised other forms of law within it. Grosseteste saw something universal in the charters. It may be significant, then, to note that he was no lawyer. Although he studied at the universities, in a period when canon law could still be considered part of theology, and although Gerald of Wales recommended him to the bishop of Hereford as a young man as helpful in business and legal issues,⁵⁷ his understanding of the details of written law, canon or common law, was patchy at best. He had acted as a papal judge-delegate, hearing a case brought on appeal before the papal court but allowed to be held in England, in the second decade of the thirteenth century,⁵⁸ but the main qualification for such a position was an ability to persuade the parties to come to compromise agreement, rather than an extensive grasp of canon law. We also know that he had, at least partially, read the most famous digest of canon law of his day, Gratian's *Decretum*, and could quote from it, and he had made an attempt in some of his letters to argue using points of canon law.⁵⁹ His knowledge of positive Church law was, however, piecemeal, sometimes wrong, and often limited to the English interpretation of it.⁶⁰ He frankly scorned possession of any knowledge of the common law, arguing that no clergyman should work in the king's courts and warning his parish priests that learning secular law would knock their knowledge of scripture straight out of their heads.⁶¹ He was, however, a theologian and a philosopher who had considered the nature of divine and natural law, and the importance of equity and of moral guidance. Even his attempts to discuss points of positive law, such as the law on illegitimacy and inheritance, have a tendency to return to discussions of natural and divine law.⁶² Magna Carta and the Charter of the Forest could, after all, be reduced to that tenet of natural law, the idea of treating others as one would wish to be treated, in legal terms. It is unsurprising, then, that Grosseteste also saw natural law in these documents, and in writing to reprimand the king he drew upon the local and the universal. It would be equally unsurprising if the

⁵⁷ Joseph de Ghellinck, *Le mouvement théologique du xii^e siècle: sa préparation lointaine avant et autour le Pierre Lombard, ses rapports avec les initiatives des canonistes* (2nd ed., Bruges, 1948), 2013-13, 416-510. *Opera Geraldus Cambriensis*, ed. J.S. Brewer, J.F. Dinnock and G.F. Warner (Rolls Series 1861-1891)i. 249

⁵⁸ McEvoy, *Robert Grosseteste*, 6.

⁵⁹ *Letters of Robert Grosseteste*, 104, 110-111, 134, 138, 214, 217, 234-5, 243, 286, 343, 424.

⁶⁰ In his letters he demonstrates that as a rector he was unaware of canon law on plurality and had to ask the pope whether he needed papal permission to hold more than one church at a time (*Letters of Robert Grosseteste*, 79, 263; Ian Forrest has demonstrated that he did not understand canon law on oaths (Ian Forrest, 'The Transformation of Visitation in Thirteenth-Century England', *Past and Present* 221 (2015), 3-38 at 11.

⁶¹ *Letters of Robert Grosseteste*, 119-22, 125-7, 134-5, 137-9, 232-54 and Dictum 90, ms Bodley 798, fo. 68r.

⁶² *Letters of Robert Grosseteste*, 110-111, 118-19.

episcopate had followed him in this. Certainly in the later 1250s, after Grosseteste's death, they were to use his failure to maintain natural law against the king in their formal complaints about royal power.⁶³

Conclusion

D'Avray has suggested that the episcopate used Magna Carta as, 'a symbol par excellence of limited monarchy'.⁶⁴ In Grosseteste's case it might be better to say that it is a symbol of a monarchy which was fulfilling its duty and so in a right relationship with God; of a monarchy which fulfils all its obligations, in particular its divine obligations, to administer justice. A king guided by the principles of Magna Carta and the Forest Charter would rule both Church and State well. Where there were no existing man-made, positive laws to follow, he would know to pursue the rule of equity; natural law, the granting of justice to all. In their content and form, Grosseteste's 1253 *gravamina* contextualised good secular rule within the frame of natural law, and interpreted Magna Carta and the Forest Charter as the out-workings of natural law. Although these charters were essentially local solutions to local, national problems, understanding the broader intellectual background and perspectives of a natural, universal law, in which these secular 'bills of rights' were formulated, articulated, reinterpreted and reissued can help throw light on how these charters gained their significance, meaning and longevity.

⁶³ See Philippa Hoskin, 'Natural law, protest and the English Episcopate 1257-1265', 83-98.

⁶⁴ David d'Avray, 'Magna Carta: its background in Stephen Langton's academic biblical exegesis and its episcopal reception', *Studi Medievali* 38 (1997), 423-38 at 433-4.